

**IN THE U.S. DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

Civil Action No. 22-1377 (MN) (JLH)

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and
SOUND UNITED, LLC,

Defendants.

Civil Action No. 22-1378 (MN) (JLH)

DEFENDANTS' OPPOSITION TO PLAINTIFF'S RENEWED MOTION TO DISMISS

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Dated: July 13, 2023

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On July 7, Apple filed a Renewed Motion to Dismiss and Strike on two grounds. D.I. 153.¹ Apple asks the Court to reissue its Report and Recommendation (R&R) so that Apple can object to that R&R. *Id.* Masimo agrees that the Court should reissue its R&R because the new allegations in Masimo's amended pleading do not change the parties' arguments or the basis for the Court's R&R. Masimo incorporates its arguments made in its opposition and at the hearing. *See* D.I. 68 at 8-12, 17-19; D.I. 83 (-1377) at 3-18; 6/15/2023 Tr. at 22-40, 50-54.²

Separately, Apple has argued the Court's R&R held "Masimo's 'predatory infringement' and 'monopoly leveraging' theories of liability are 'invalid' as a matter of law, and that the case should not proceed on those theories." D.I. 140 at 2. Based on that argument, Apple has now taken the position that it need not provide discovery on those theories. Exhibit A at 1; Exhibit B at 1; Exhibit C at 1. Apple's position is untenable because the deadline for substantial completion of document discovery is August 10 and the close of fact discovery is September 21. D.I. 92 at 15-16. Apple may dispute the relevance and proportionality of particular requests, but it has no basis for refusing to provide discovery on issues it intends to raise with Judge Noreika. Thus, Masimo respectfully requests that the Court make clear that the R&R did not limit discovery, and that Apple's objections to the R&R provide no basis to delay discovery on any issue.

Respectfully submitted,

July 13, 2023

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By: /s/ John C. Phillips, Jr.

Of Counsel:

¹ Unless stated otherwise, all citations are to 22-cv-01378.

² Apple indicates it will object to the R&R by making new arguments and citing new cases. *See* D.I. 153 at 3 (citing D.I. 140 filed after the R&R). If Apple does so, Masimo will object and/or address the arguments on the merits in its opposition to Apple's objection.

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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2023, a true and correct copy of the foregoing document was served on the following counsel of record at the addresses and in the manner indicated:

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July 13, 2023

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